IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1516 of 2004
IN
WRIT PETITION NO.3940 OF 1991

1. 1. Mohd.Mohsin Abdul Aziz Muckba and ors. .. Applicants
Vs
1. State of Maharashtra and ors .. Respondents.
Mr Vinod Solanki, for the applicants.
Mr A.A.Kumbhakoni, Associate Advocate General with Mr S.R.Nargolkar, AGP for respondent no.1.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : APRIL 03, 2006.

PC:

1. Heard the learned counsel for the applicants and the learned AGP for respondent no.1.

2. Two prayers have been set out in the alternative in this civil application. The first prayer is for dismissal of the writ petition, i.e. Writ Petition No.3940 of 1991, in view of the order dated 22.10.2001 passed by the Division Bench of this Court and the second prayer, in the alternative, is that Writ Petition No.3940 of 1991 be declared as abated as against original respondent no.1.

3. We have noted that the order dated 22.10.2001 has been subsequently set aside by this Court in civil Application No.2227 of 2003 and, therefore, the first prayer does not survive. So far as the second prayer is concerned, the learned counsel for the petitioner, states that by a communication dated 30.3.1998 the Registrar of

this Court was informed that respondent no.1 had expired on 30.9.1996 and the said intimation was given under Order 22, Rule 10A of the Code of Civil Procedure, 1908. The affidavit-in-reply filed by the Assistant Conservator of Forests, states that civil application no. 1517 of 2004 has been filed and is pending for bringing the legal heirs and representatives of deceased respondent no.1 on record. It is further stated that on 8.10.2003 when they went to serve the amended memo of the writ petition it was brought to their notice that respondent no.1 was no more and, therefore, they got the knowledge of his death for the first time on 8.10.2003. It appears that the Registrar of this Court did not notice the learned AGP on receipt of the communication dated 30.3.1998 from the learned counsel for the applicant. In these obtaining circumstances, we are not inclined to entertain the prayer of dismissal of writ petition no.3940 of 1991 against respondent no.1 on the ground that it is abated. The application is,therefore, rejected.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**